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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of The Timken Company and the Ohio Power Company for Approval of a Unique Arrangement for The Timken Company's Canton Ohio Facilities.	)))))	Case No. 10-3066-EL-AEC

JOINT MEMORANDUM CONTRA TO OCC MOTION FOR HEARING AND OCC MOTION TO SHORTEN DISCOVERY RESPONSE TIME

I. INTRODUCTION

On December 20, 2010, The Timken Company ("Timken") and Ohio Power Company ("OPCo"), collectively the "Applicants," submitted an application for a unique arrangement pursuant to Section 4905.31, Revised Code, and a commitment of energy efficiency under Section 4928.66, Revised Code (the "Application"). The goal of the unique arrangement is to assist employment and investment in manufacturing facilities by providing for stability in energy pricing including a series of declining discounts for a limited period of time not to exceed a capped amount of delta revenue. The unique arrangement also provides for a commitment by Timken to integrate its energy efficiency programs with OPCo, for no additional payment or discount, to assist in meeting the utility's peak demand and energy efficiency goals established in Amended Substitute Senate Bill 221 ("S.B. 221").

On January 10, 2011, OCC filed a motion to intervene, a motion for electronic service of discovery, a motion to shorten the time to respond to discovery and a motion for hearing. The Applicants do not object to OCC's motion to intervene or its motion for electronic service of discovery. Thus, the focus of this brief shall be on (1) OCC's request for a hearing and (2) OCC's request to shorten the discovery response period.

S.B. 221 does not require the Commission to hold hearings prior to approving a unique arrangement. The conscious decision by the General Assembly not to mandate a hearing likely

arises from a recognition that the business transactions underlying unique arrangements are often time constrained and that mandating a lengthy procedural schedule might threaten the very projects the statute was designed to stimulate. Commission Rule 4901:1-38-05 follows this principle whereby "[u]pon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable." O.A.C. 4901:1-38-05(B)(3) (emphasis added). To facilitate its decision, the Commission allows affected parties to "file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application." O.A.C. 4901:1-38-05(F). Thus, the Commission will not hold a hearing unless it determines that an application appears to be unjust or unreasonable.

Timken and OPCo have worked to present an application to the Commission that is sufficiently developed to allow for a decision without procedural delays. The Application discusses the need for the unique arrangement and fully describes the discount design, the amounts that would be classified as delta revenue and the aggregate cap on delta revenue under the unique arrangement. The Application also sets forth Timken's employment commitments and investment commitments as well as the penalty to be imposed if Timken does not meet its commitments. The detailed information in the Application provides the Commission with the information necessary to render a decision in a timely manner.

Even though the information supporting the Application is well developed and ripe for a Commission decision, OCC requests an adjudicatory hearing to be held no sooner than May 11, 2011. Such a timeline is unacceptable because it pushes the Commission's decision on the Application to the fourth quarter of 2011. More importantly, the nature and type of the concerns expressed by OCC in its comments do not justify a hearing in this matter.

OCC has filed four comments, none of which show that the application "appears to be unjust or unreasonable" First, OCC comments that the termination provisions of the arrangement which call for an end to future discounts but not a "claw back" are unreasonable. (OCC, p. 8-9.) This is a flawed argument, for if Timken can purchase power on the open market on a sustained basis for less than the discounted price, it is in the best interests of everyone that Timken does so because termination of the unique arrangement ends any further delta revenues. If you add a penalty on top of that, Timken will not shop until the market price falls to tariff minus discount minus penalty. Moreover a policy of retroactive penalties increases the risk a company incurs when expanding business in Ohio through a unique arrangement – the exact opposite of what the General Assembly was advocating. OCC's request to impose a disincentive on shopping and retroactive penalties seem ill advised and directly contrary to its concerns that delta revenue can lead to excessive rates.

OCC's second comment is that the proposed discount cap structure could lead to excessive rates. The discount cap proposed in the Application, however, complies with the Commission's regulatory principle on unique arrangements, imposing a discount floor and a ceiling on the delta revenue. *See In the Matter of the Application of Ormet Primary Aluminum Corporation*, Case No. 09-119-EL-AEC, July 15, 2009 Opinion and Order at pg. 9. No further facts beyond the proposed discount cap are required to allow the Commission to decide if the proposed investment and employment commitments justify the cost of the unique arrangement.

OCC's third comment is that the discount should not apply to the Provider of Last Resort (POLR) component of Timken's bill. This comment has no merit because Timken can go to market during the term of the unique arrangement, creating a risk that Timken could return to standard service offer. That risk allows OPCo to recover its incurred costs for POLR consistent with the Commission's prior holding that "Section 4905.31, Revised Code, allows for the

recovery of 'costs incurred.' " *In the Matter of the Application for Establishment of a Reasonable Arrangement Between Eramet Marietta, Inc. and Columbus Southern Power*, Case No. 09-516-EL-AEC, Opinion and Order, Oct. 15, 2009 at p. 8-9. Likewise, OCC's fourth comment that OPCo should share in the cost of the unique arrangement and that "PUCO's policy regarding economic development and the subsequent delta revenues has been in place for over 25 years" is without merit (OCC, p. 13) because the development of S.B. 221 and the plain language and meaning of Section 4905.31, Revised Code, clearly allow a utility to recover its incurred costs.

As none of OCC's comments require further factual development and are essentially policy arguments, the Commission may proceed to rule on the Application without a hearing. Alternatively, any hearing in this matter should commence as expeditiously as possible, no later than late February or early March, and only on the issues the Commission believes require further factual development. The hearing time can be further reduced by requiring the parties to stipulate to facts where possible. A pretrial could be held as soon as possible to set up the procedural schedule with a goal of issuing a Commission decision no later than May 2011.

As to the procedural schedule, OCC's request to shorten the response time for discovery is premature. The General Assembly gave the Commission discretion to approve unique arrangements without a hearing recognizing the inherent timing needs of businesses. Until the Commission determines a hearing is necessary, OCC has no reason to serve discovery or request a shortened response time for discovery. OCC's motion to shorten the period for discovery responses to seven days is also without good cause because a non-utility, Timken, will bear the burden of responding to OCC's discovery requests, and seven days is not sufficient to identify and collect documents, draft interrogatory responses and finalize discovery responses all the while performing daily job responsibilities. OCC's motion is premature.

Accordingly, as more fully discussed below, the Commission may deny OCC's motions and exercise its discretion to rule on Timken and OPCo's Application without a hearing.

II. ARGUMENT

A. An Adjudicatory Hearing is not Required in this Matter.

In its motion for hearing, OCC requests that the Commission "establish an evidentiary hearing on this application, no sooner than May 11, 2011." (OCC, p. 17.) OCC claims that the 20-day deadline for filing comments under Rule 4901:1-38-05(B)(3) provides "the parties with a very limited time in which to review the Application and formulate arguments in favor of or against the Application." (*Id.*, p. 16.) OCC argues that time and further investigation are needed to "accurately assess the specific impact on the different customer classes vis-à-vis the expected benefits of the arrangement" and that an "expedited approval" by the Commission will not permit the necessary analysis and consideration of "alternatives." (*Id.*, p.16-17.) OCC also argues that there "are provisions in the unique arrangement that are unjust and unreasonable" and that parties will have "the opportunity to further explore the application, conduct discovery and determine the implications of the unique arrangement" if a hearing is set no sooner than May 11, 2011. (*Id.*, p. 17.)

The Commission should reject OCC's motion for a hearing . The Commission's rules are set up to allow for expeditious rulings on applications that the Commission finds reasonable. Specifically, Rule 4901:1-38-05(B)(3) gives the Commission discretion to "fix a time and place for a hearing <u>if</u> the application appears to be unjust or unreasonable." O.A.C. 4901:1-38-05(F). (emphasis added). Contrary to OCC's implication, Rule 4901:1-38-05(B)(3) does not give OCC a right to actively participate in the Commission's decision. Rather, OCC is entitled under the rule to provide any comments and/or objections within twenty days of the date of filing of the application. O.A.C. 4901:1-38-05(F). OCC has submitted its comments to the Commission and

the Commission must now consider whether those comments support a determination that the Application "appears to be unjust or unreasonable."

OCC's comments do not support a finding that the Application "appears to be unjust or unreasonable." OCC's comments relate to the termination of the unique arrangement, applying the discount to POLR charges, the structure of the discount arrangement and OCC's belief that OPCo should absorb part of the delta revenue from the unique arrangement. As explained below, none of these comments has merit or requires further factual development for the Commission to address the comments.

1. The unique arrangement's termination provisions are just and reasonable, and do not impair the Commission's authority.

OCC's first comment is that the termination provisions of the arrangement and the inability of the Commission to "claw back" discount amounts in the event employment and investment commitments are not met by Timken are unreasonable. (OCC, p. 8-9.) In essence, OCC is making a policy argument. OCC believes that companies receiving unique arrangement discounts should be penalized if an early termination occurs or if commitments are not met. Companies seeking unique arrangements like Timken, though, are not utilities which are regulated and can pass some of the risk of business/economic cycles or the risk of a capital investment to ratepayers. Instead, Timken alone bears those risks and the Commission should not adopt a policy of increasing those risks by imposing penalties or discount claw back provisions.

OCC bases its proposed policy on two arguments. First, OCC argues that the proposed arrangement's termination provisions are unjust because "termination of the unique arrangement whereby no minimum monthly billing demand charges or other penalties are incurred may be inconsistent with the tariff provisions (GS-4) and/or IRP-D) which otherwise apply to Timken."

(OCC, p. 8.) This argument has no merit as unique arrangements are statutory exceptions to tariff requirements. *See* R.C. § 4905.31. Moreover, the OCC's position runs counter to current case precedent. The Commission recently approved a unique arrangement in which the applicant could "terminate the agreement upon 90 days notice, without minimum monthly billing demand charges or other penalties, including for the purposes of purchasing generation from a competitive retail electric supplier." *See In the Matter of the Joint Application for Establishment of a Unique Arrangement between the Ohio Power Company and Severstal Wheeling, Inc.*, Case No. 10-1461-EL-AEC, Entry of October 22, 2010 at Finding (3)(a).

Second, OCC argues that the termination provisions of the proposed unique arrangement strip the Commission of its authority under OEC 4901:1-38-09(E) to monitor compliance with eligibility criteria. OCC argues that Timken's commitment to investment and employment retention at the Canton facility constitute eligibility criteria and that the Commission "should be able to not only modify or terminate the arrangement, but should be able to claw back the discount[.]" (OCC, p. 9.) Significantly, OCC provides no authority for this claim, nor can it, because the eligibility criteria referred to under Rule 4901:1-38-09 relates to the criteria listed under an application for Commission approval for an economic development arrangement. O.A.C. 4901:1-38-03(A)(2). Timken's application, on the other hand, is a unique arrangement submitted under Rule 4901:1-38-05.

An application for a unique arrangement has no formulaic eligibility criteria. Rather, the applicant has the burden of describing how the arrangement furthers the policy that the state of Ohio embodies in Section 4928.02, Revised Code. O.A.C. 4901:1-38-05(C). The fact that the proposed unique arrangement includes a commitment to make capital investments and maintain employment at its Canton facility does not subject Timken to the requirements of Rule 4901:1-38-09.

The Commission may also take note that under the proposed unique arrangement, Timken is subject to penalty if employment and investment pledges are not met during the term of the arrangement. Specifically, the Applicants are proposing that a reduction in the monthly rate discount be applied during periods in which Timken fails to meet its employment and/or capital investment commitments. (Application, ¶¶ 45-47.) These provisions provide a direct incentive to Timken to meet the commitments in the Application.

OCC also ignores that under Rule 4901:1-38-07(C)(3), upon Commission approval, the unique arrangement will be under the supervision and regulation of the Commission, and subject to change, alteration or modification by the Commission. O.A.C. 4901:1-38-07(C)(3). The penalty provisions proposed in the Application along with the Commission's existing authority to change, alter and modify the arrangement on an on-going basis refute OCC's claim that the Application "strips" the Commission of its authority.

As a final point, if Timken can purchase power on the open market for less than the discounted price, it is in the best interests of everyone that Timken does so because termination of the unique arrangement ends any further delta revenues. Rather than promote disincentives to go to market, OCC should be supportive of incentives that lead to the early termination of a unique arrangement and minimization of delta revenue. OCC's promotion of disincentives is ill advised, should not be adopted by the Commission and does not support a Commission finding that the application "appears to be unjust or unreasonable."

2. <u>The structure of the unique arrangement conforms with prior Commission guidance and is just and reasonable.</u>

OCC's second comment also does not support a hearing in this matter. OCC comments that the cap on discount could result in customers "paying for an excessive discount given to Timken on an undefined basis." (OCC, p. 9.) OCC believes the limiter provision of the unique

arrangement acts to limit a monthly bill to no more than 5% over the prior year's tariff rate. (OCC, p. 10.) OCC also interprets the limiter as being based on 2008 costs and not at current tariff rates applicable to other customers. (*Id.*) OCC concludes that the discount design could result in a "discount being granted to Timken that is 25% off 2008 rates, from day one to day 3,650 (ten years) – the entire contract period." (*Id.*, p. 11.) OCC is also concerned that the cap on the aggregate discount amount is unreasonable. OCC argues that the cap is unreasonable because it undermines the policy of the state to "ensure that consumers have reasonable priced electric service[.]" (*Id.*) OCC also implies that OPCo customers have limited resources and are already absorbing the cost of existing economic development arrangements, OPCo's 2011 ESP increase and ESP deferrals. OCC also argues that an aggregate cap versus a yearly cap is unreasonable because the cap could be met in the "early years of the ten-year contract under the limiter provision." (OCC, p. 12.)

OCC's comments reflect a basic misunderstanding of the discount being proposed in the unique arrangement. The proposed discount structure utilizes a declining percent off total invoice charges for generation, transmission, distribution and all riders. (Application, p. 5.) In year one, the discount would be 15 percent and reduce thereafter until it reaches 2 percent in the last year. (*Id.*, ¶ 20.) In addition to the declining discount off tariff, Timken may receive an additional discount if the monthly bill after discount exceeds a preset dollar amount, i.e. the "limiter."

The limiter is intended to prevent year to year monthly price spikes. (Application, ¶ 23.) OCC mistakenly believes that the limiter consists of applying a five percent increase to 2008 rates over the term of the unique arrangement. (OCC, p. 10.) That assumption is incorrect, the limiter is simply a monthly dollar cap on the total Timken invoice and is based on 2008 monthly invoices <u>at 2008 usages</u> prior to the economic downturn. (Application, p. 6 *and see* ¶24.) This

makes sense as loads and usage after the dramatic downturn in the economy were much less resulting in lower monthly invoices. The higher the limiter monthly dollar cap, the less chance the limiter will be applied in any given month.

The limiter could result in additional delta revenue if a discounted invoice exceeds the maximum bill amount for that month set by the limiter. Timken, however, cannot receive a total discount in any month more than 25% off tariff rate under the proposed unique arrangement. Also, the aggregate discount that Timken could receive over the ten-year period for the unique arrangement is capped. These provisions of the unique arrangement are intended to ensure that a discount floor, i.e. the minimum amount Timken must pay, and a ceiling on the delta revenue, i.e. the maximum customers must pay, are in place.

This design meets the Commission's regulatory principle for unique arrangements whereby there should be a ceiling on the amount other ratepayers are expected to pay and a floor on the amount of the discount. *See Ormet Primary Aluminum Corp., supra*, Case No. 09-119-EL-AEC, July 15, 2009 Opinion and Order at pg. 9. Thus, OCC has no basis claiming that the aggregate cap will undermine state policy on reasonable rates or lead to excessive rates for ratepayers when the design complies with Commission regulatory principles. OCC also has no basis for imposing its judgment over that of Timken's as to the amount of discount necessary to support the capital investment and energy conservation that will sustain Timken's competitive position and sustain employment. That decision is Timken's alone subject to the Commission's determination of whether the proposed capital investment and employment commitments justify the cost.

3. Timken's ability to terminate the unique arrangement and go to market is reasonable and allows OPCo to recover any discount amount attributable to a reduction in POLR charges.

OCC's third comment may also be disposed of without a hearing. OCC comments that the Commission "should require Timken to completely fund its right to shop by applying the full POLR charge to Timken and offsetting the economic development rider by the POLR revenues collected from Timken." (OCC, p. 12-13.) OCC claims that Timken's ability to terminate the unique arrangement gives Timken "the best of both worlds" and that Timken should fully pay for its right to shop. (*Id.*) OCC states that it is "unreasonable" for customers of OPCo to fund "not only the discounted rates to Timken, but also fund Timken's right to go to market at any time." (*Id.*, p. 13.) Timken and OPCo disagree with OCC's premise and submit that the proposed contract terms are not only reasonable and lawful, but they are in the best interests of OPCo's other customers as well.

As an initial point, OCC's comments that Timken should "completely fund" the POLR charge reflects a basic misunderstanding of the nature of the proposed discount. The discount is not a discount applied separately to each component of Timken's monthly generation, transmission and distribution charges. Instead, the discount proposed in the unique arrangement is a declining percent off the total amount of Timken's monthly invoice. Thus, OCC's claim that Timken should "completely fund" its right to shop is simply a request to lower the overall percent of the monthly discount.

Timken and OPCo included the right to shop during the term of the unique arrangement in order to ensure that OPCo's other customers, in paying for the delta revenues associated with the proposed unique arrangement, do not pay any more than is needed in comparison to market rates. The only circumstance where Timken would shop during the term of the unique arrangement would be if the market prices for generation service were more favorable over a

sustained period than the unique arrangement's discounted rate. If the market can provide a better rate, then Timken may shop in which case ratepayers would not incur any additional delta revenues because the unique arrangement would terminate. Thus, while OCC maintains that the agreement would result in the best of both worlds for Timken, the proposed terms also result in the best of both worlds for ratepayers by simultaneously promoting economic development in Ohio while preserving the ability to eliminate the ratepayers' cost should the competitive market result in a better price. In negotiating parlance, this is known as a "win-win" solution.

While OPCo and Columbus Southern Power have maintained that customers have the right to shop and that contracts recently proposed by Ormet Primary Aluminum Corporation and Eramet Marietta, Inc. were not sufficiently clear in providing that the utility would be an exclusive supplier, the Commission rejected those arguments and held that the customer has the ability to waive its right to shop and, where it has done so, the POLR risk for the utility is mitigated. *Ormet Primary Aluminum Corp., supra*, Case No. 09-119-EL-AEC, July 15, 2009 Opinion and Order at p. 13-14 *and see Eramet Marietta, Inc., supra*, Case No. 09-516-EL-AEC, Opinion and Order, Oct. 15, 2009 at p. 8-9. Here, the customer is clearly not waiving its right to shop so the POLR risk is not mitigated. Under the proposed arrangement, Timken would still be billed the POLR charge under the proposed discounted rates and OPCo would recover the delta revenues (including any discount as may be attributed to the POLR charge). Accordingly, the fact that Timken can go to market justifies OPCo's recovery of any discount amounts attributable to POLR charges.

4. <u>OCC's Sharing Proposal Contradicts Section 4905.31, Revised Code.</u>

OCC's last comment is that OPCo should split the delta revenue costs with consumers. OCC claims that "PUCO's policy regarding economic development and the subsequent delta

revenues has been in place for over 25 years" mandates that both OPCo and its customers must share in the cost of the unique arrangement. (OCC, p. 13.)

To support these claims, OCC argues that the Commission's policy "complements the provision in S.B. 221 that address economic development arrangements." (*Id.*) OCC states that OPCo will receive a number of benefits as a result of the proposed unique arrangement and that the Commission should require OPCo to list all benefits. (*Id.*, p.14-15.) OCC also claims that OPCo would have an "additional incentive" to "negotiate" a "fair and competitive deal" with Timken if it was required to share the discount.

OCC's comment has no merit. OCC alleges that a delta revenue sharing policy has been in place for over 25 years; but that assertion ignores the development of S.B. 221 and the plain language and meaning of Section 4905.31, Revised Code. OCC's reliance on the pre-customer choice 50-50 split is not compelling. First, S.B. 221 amended Section 4905.31, Revised Code, to specifically provide for the recovery of revenue foregone. OCC's reliance on the distant past cannot be reconciled with this statutory change. Second, whatever merit there might have been in a 50-50 split must be understood in the context of a temporary (typically three year) discount of the demand charge. That is far different from the potential revenue foregone under Timken's proposed unique arrangement. In approving reasonable arrangements, the Commission will presumably determine that the value of the discount will be outweighed by the public benefit and, consequently, it follows that full recovery of the discount should be recovered by the utility. In short, the structure and ostensible intention of S.B. 221 is to incentivize companies to pursue economic development by allowing full recovery of delta revenue - not merely half of the discount.

OCC relies upon an argument that the statute says the arrangement "may include" a financial device to recover costs, not "must include." A closer review of the statutory language

shows that this interpretation renders the statute without meaning and cannot be relied upon as a valid interpretation. The introductory language in the sentence preceding the list in Section 4905.31(E) applies to all four items and the entire sentence must be read and understood before reaching any conclusions about the General Assembly's use of the phrase "may include" in the introductory part of the sentence. The context and grammatical structure of the sentence used by the General Assembly in Section 4905.31(E), Revised Code, including the use of semicolons to separately list the four items, is that a financial device "may include" items 1; 2; 3 and 4. The phrase "may include" in the first part of the sentence is in prelude to listing the four permitted items and the phrase does not modify the language internally used to describe any of the individual items 1; 2; 3; and 4.

By contrast, OCC's sharing argument necessarily misapprehends the phrase "may include" as modifying the far-removed phrase "including recovery of revenue foregone." Thus, OCC's application of the statute improperly joins the distant phrases together to awkwardly interpret that language as saying that a financial device "may include ... including recovery of revenue foregone." This interpretation is not grammatically correct because it inappropriately grafts the list's introductory phrase "may include" onto the internal language describing item one in the list of four items. This interpretation also serves to undermine the General Assembly's manifest intention to permit recovery of economic development costs "including revenue foregone." Though the Commission has authority to approve or disapprove proposals under Section 4905.31, Revised Code, the statute does not permit the Commission to approve a proposed arrangement and simultaneously disallow a portion of the resulting foregone revenue.

OCC's argument that the Commission should determine some independent benefit beyond the contract as part of its analysis in developing a sharing provision of the delta revenue is equally misplaced. As discussed above the sharing of the delta revenue denies the utility the

purpose of Section 4905.31, Revised Code, to recover the costs incurred in association with a program including "revenue foregone." To the extent the Commission should consider benefits to the utility as part of its review of a special arrangement it would only apply to contracts in which the discount is based upon cost savings to the utility. The Timken contract is not based on cost savings to the utility. The Commission will make its finding to approve or deny the Application. That analysis will determine if a fair arrangement is present, but changing the level of the delta revenue to leave the utility without the "revenue foregone" is not part of the Commission's review.

Accordingly, as OCC's comments do not show that the Application "appears to be unjust or unreasonable," the Commission should deny OCC's motion for hearing and proceed to rule on the Application without a hearing. In the event the Commission requires factual development on the proposed Application, it should hold a hearing as expeditiously as possible, no later than late February or early March, and only on those issues that the Commission requires further development with a goal of issuing a final decision by May 2011.

B. OCC's Motion to Shorten the Response Time for Discovery Should be Denied.

OCC seeks to shorten the response time for discovery from 20 days to seven calendar days. (OCC, p. 17.) OCC argues that good cause exists because the right to "conduct ample discovery" will be impaired by the "current time frame being followed in this proceeding[.]" (*Id.*) OCC also argues that the seven-day response time is necessary to "assure that the hearing proceeds in an orderly and expeditious manner." (*Id.*, p. 18.) Lastly, OCC argues that expedited discovery has been ordered by the Commission in other cases that are "expedited by statute." (*Id.*)

OCC's arguments are without merit and do not represent good cause. As an initial point, there is no basis for OCC's statement that discovery will be impaired by the "current time frame" in this proceeding. (OCC, p. 17.) No time frame exists for this proceeding other than the January 18, 2011 Entry setting a deadline to file comments by January 25, 2011. There is no procedural schedule set for this matter and the Commission has made no indication that it will require a hearing on this matter. Accordingly, unless the Commission makes such a decision, there is no need for OCC to serve discovery and no need for OCC to request an expedited response time for discovery. OCC's motion is at best premature.

Second, the burden of any discovery in this proceeding will fall on Timken, a non-utility that does not have personnel dedicated to Commission proceedings. Timken personnel will have only a short time to identify and collect documents, draft interrogatory responses and finalize formal discovery responses. This must be accomplished in addition to their other daily responsibilities at Timken. The 20-day discovery response period in the Commission's rules should be maintained until the Commission rules on the Application or a pretrial conference is held to set up a procedural schedule on the issues for hearing.

III. CONCLUSION

For the foregoing reasons, OCC's motion to shorten the response time for discovery and its motion for hearing should be denied. In addition, the Commission may find that OCC's

comments are without merit and proceed to render a decision on the proposed unique arrangement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2011, a copy of the foregoing document was served by electronic mail and U.S. Mail postage prepaid upon:

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